IGEA

interactive games & entertainment association

Submission to DFAT on digital trade

July 2019

Interactive Games & Entertainment Association

Introduction

The Interactive Games & Entertainment Association (IGEA) is the peak industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry. Our members publish, market, develop and distribute interactive games and entertainment content and related hardware.

We are pleased to contribute this submission to the Department of Foreign Affairs and Trade (DFAT) on digital trade as part of its consultations with Australian stakeholders in the context of the World Trade Organisation's (WTO) E-commerce negotiations. Australia's economy and particularly its creative businesses are both increasingly reliant on, and a key driver of, digital trade. Digital trade opens new markets for content creators and helps them to leverage diverse business models and exploit export opportunities. As a key component of Australia's creative economy, Australian game developers strongly support ongoing bilateral and multilateral dialogue to liberalise the global digital trade environment.

We welcomed the [Joint Statement on Electronic Commerce](#) and was encouraged by its call for WTO members to work together to further enhance the benefits of electronic commerce for the global economy. We also recognise the Australian Government and Minister Birmingham's global leadership to drive this issue and supported the [Minister's statement](#) that establishing new international rules for digital trade will help keep digital markets open, reduce barriers and make it easier for Australian business to find new markets.

The economic power of video games

The interactive games sector is one of the fastest-growing technology and entertainment industries in the world, eclipsing both the filmed entertainment industry and the music industry. In 2018 the global games market was estimated to be [worth almost $200 billion](#). Economic research commissioned by IGEA found that Australians spent over $4 billion on video games and games hardware in 2018, a 25 per cent rise from 2017. Digital sales of games, in particular, rose an impressive 39 per cent year-on-year to $2.85 billion million, while in-game digital purchases grew an astonishing 190 per cent. IGEA's full research can be found [here](#).

Australians' love affair with video games is even more clearly shown through our social research. Research conducted by IGEA and released in July 2019 found that two out of every three Australians play games and that 9 out of 10

homes have a device on which games have been played. Video games are not just played by children (who make up less than a quarter of game players), with the average age of an Australian gamer being 34 years old while 42 per cent of those aged 65 and over are also game players. In fact, older people are amongst the faster growing demographic of the game playing community. Our research also shows that video games are increasingly important ways for friends and family to connect, and also have a therapeutic role in promoting social and emotional well-being. IGEA's full research on the people who play games in Australia, how they play them and why is available here.

Why the inbound digital trade of video games is so important, apart from the social and cultural value of games to Australians, is that it is contributing significantly to Australia's economy. First of all, the consumption of games in Australia, both in terms of physical and digital sales, both stimulates the economy as well as attracts significant amounts of GST and corporate income tax for Australian governments. The high popularity of games is also a key driver of demand for a diverse range of consumer goods, not just on gaming consoles but also phones, tablets, computers, TVs, chairs and peripherals like keyboards, mice and headsets. All of this supports both digital and bricks and mortar stores of all sizes throughout Australia.

The popularity of digital games is also leading the take-up of high-speed internet - both fixed-line and wireless - and driving providers to improve their services and innovation in products. It's supporting the esports scene, a sector that is seeing millions in investments from traditional sports and leading to sold-out events across Australia with tens of thousands of attendees. Finally, a thriving domestic games market is also necessary to attract game developers, including both independent Australian studios and major overseas entrants, to invest in locally made games. These are just some of the reasons why open digital trade markets and routes are so critical.

Video games as ideal digital exports

Games are a high potential export industry for Australia given that they are increasingly digital and therefore exported instantaneously around the world without transportation costs or significant environmental footprint. Many Australian games are built on original intellectual property, meaning that export profits flow through to home-grown businesses who re-invest these profits into building even more and better products to export. Australia's pool of talent and complementary time zone also makes our game development businesses ideal candidates for collaborative or joint projects with overseas partners, while Australia's small, but advanced and sheltered market makes it

an attractive testbed for trialling new technologies including innovative gaming products and services.

Unlike many other kinds of Australian products that may only have sustainable export markets in certain parts of the world, the global digital games market is the entirety of the billions of game players across six continents. Australian games are already popular in English-speaking and European countries and our proximity to Asia means that we are on the doorstep of the region of the world where digital games are most popular. Also, unlike many other kinds of Australian exports, including other digital exports, individual games have the potential to provide a long tail and generate sustained wealth through ongoing content that capture and grow player bases and leverage diverse income streams such as subscription, advertisements and microtransactions.

While video games continue to be popular as entertainment for people of all ages across the world, games are also finding 'serious' applications, including in the education, health care, defence, business, research and community sectors. Some Australian game developers, potentially given the lack of traditional screen funding available to them, have adapted by developing niche expertise in serious games. This expertise provides an extra level of diversification to the Australian game development industry and in future, can turn Australian into a key exporter of digital 'gamification' services.

DFAT has recognised games as both an economic and cultural export priority, with the 2017 Foreign Policy White Paper stating the "*need to invest in exporting Australia's software development and interactive content expertise to take advantage of growth in digital games development*". The creation of video games in Australia is also a highly involved process, providing work not only for game designers and game developers, but workers right across our creative sectors including artists, composers, writers and actors. Once again, a digital trade environment characterised by open markets and minimal barriers is key to Australia's potential as an exporter of video games.

The Australian game development industry is still far from reaching its full potential. A [survey](#) that IGEA conducted last year found that Australian game developers generated $118.5 million in revenue in the preceding year and employed just 928 full-time employees. Unlike other parts of the screen industry, game developers do not currently receive any specific federal funding – incentives that could fuel the industry's growth, expand digital exports and develop the next generation of high-skilled digital workers. In December 2018, IGEA released a policy paper '*[Building a Thriving Interactive Games Development Industry in Australia](#)*' that outlines why a game development industry is so vital to Australia and sets out the concrete steps for how the Australian Government can better support it.

Priorities for future WTO negotiations

We note the helpful [table](#) that DFAT has provided on its website outlining the range of key objectives Australia pursues in its trade agreements to support digital trade. We are supportive of a number of these positions, with some particularly relevant ones including:

- Countries should be **transparent** in making available to the public any measures related to e-commerce, including online, and where possible provide advance publication and opportunity to comment
- Countries should continue the practice of **not applying customs duties** to electronic transmissions, on technological business and consumer products
- Countries should not require businesses operating in their territory to locate computing facilities (**data localisation**) within their borders
- Countries should not require the transfer of or access to mass-market software **source code** as a condition for the import, distribution, sale or use of software
- Governments should co-operate on areas of mutual interest in digital trade including on **cybersecurity** matters
- Countries should continue to implement existing commitments and endeavour to build on those commitments to ensure the **efficient movement of goods across borders**

The rest of this submission further expands on some of these and other priorities in the context of the games industry.

Reducing the barriers to digital trade

IGEA supports continued progress by WTO members to promote the free and open trade of digital goods and services globally. Similar to other export-focused industries, the digital games sector continues to face pressures from policies and overall uncertainty in the global digital regulatory environment that has added complexity and cost to cross-border trade activity. Given that so many growing Australian game development studios are start-ups and small to medium-sized businesses, they are particularly exposed to and impacted by obstinate or rising digital trade barriers.

We support the goal of non-discriminatory treatment of digital products between countries, including the removal of barriers to digital trade and the transfer of capital and information across borders. We urge action against discriminatory rules in digital markets, including local presence and content requirements, mandatory licensing arrangements and limitations on foreign ownership that exist in some regions of the world. These kinds of protectionist

measures have the impact of constraining and eroding confidence in digital trade at exactly the time that we should be encouraging trade and investment flows between markets, the sharing and exploitation of innovative ideas and the forging of mutually beneficial partnerships between market participants.

We will continue to fight against tariffs or customs duties on digital goods like video games. The imposition of such charges on digital trade would likely be passed onto consumers, meaning that overseas barriers would harm export-orientated game development studios in Australia and the innovation they represent, while barriers at home would harm the thousands of workers in businesses selling games and game-related products. Video games are already subject to valued added taxes in Australia and many regions around the world, which are often applied to even the smallest of microtransactions.

We also support common-sense and practical arrangements for digital trade where member countries have sufficiently robust and broadly similar domestic controls in place to protect data security, privacy, consumer rights and cybersecurity. Noting that national laws are unlikely to ever be identical, a good compromise is one that strikes an appropriate balance between open digital trade and safeguards, noting the lengthy and challenging process that regulatory reform demands, and the significant compliance costs required for businesses and particularly exporters. For example, member countries should not impose data localisation requirements nor necessitate changes to reasonable laws. Any reforms of Australian privacy laws, for instance, should be driven not by international trade obligations but by the domestic policy agenda and subject to comprehensive consultation.

<u>Reducing barriers to investment and movement</u>

We believe that a thriving digital trade environment will help encourage, and benefit from, increased inbound and outbound investment between Australia and member countries. Foreign investment has always been vital to Australian businesses and the video games industry is no different. Australian game developers are attractive partners to foreign studios for investments, collaborative projects, joint ventures and 'work for hire' arrangements, given our talent and creativity and also Australia's advantageous time zone. It should not be a one-way street and ambitious Australian studios should be encouraged to expand overseas, particularly into Asia. The breaking down of trade barriers through the liberalisation of investment rules will encourage relationships and cooperation between companies based across member countries and bring benefits to the Australian and global economies.

We also support measures being undertaken to provide for greater freedom of movement for video game professionals, which will create a 'win-win'

scenario. Given the current limited size of the Australian video games industry, it is vital to not only the success of Australian-made games but also the general health of the industry as a whole that local businesses have the flexibility to bring in talent quickly, easily and affordably when needed. Our members tell us that it is difficult to find experienced game development workers, particularly experienced managers, who are then able to share their skills with the local workforce. Decisions by businesses whether to embark on a project or expand a team can turn on the ability to find the right person to lead it. Similarly, it is vital that young Australian game developers have every opportunity to travel abroad to enhance their careers and, just as importantly, learn new skills that they can bring back home with them (as often happens).

Member countries should also work on ways to enhance the ability of their respective businesses to sponsor professionals in each other's jurisdictions for work and business visas, including on contractual and semi-permanent arrangements. For example, we are aware that some countries impose high visa costs and impractical restrictions that hinder collaboration between businesses – issues that should be the focus of multilateral dialogue. We would also support the liberalisation of arrangements for temporary work and working holiday visas between member countries, noting that they can help to facilitate early and vital training opportunities for young game developers and broaden their horizons.

Copyright protection

Future negotiations between member countries should encourage the adoption of strong copyright protections for content creators. Video games rely on copyright protections for both software and non-software elements, such as the underlying code, gameplay visuals, musical score and the speech and likeness of characters. Just like many other parts of the digital economy, copyright-protected content underpins Australia's video games industry and strong copyright protections are essential. For example, given that the economic value of video games can extend for decades after their release, particularly given the demonstrable success of remastered games and the enduring appetite for retro and "indie" games, lengthy terms of copyright protection are crucial to the industry.

Copyright infringement remains a significant challenge for game developers in Australia and around the world. Peer-to-peer file sharing and other online technologies are still being used to infringe the copyright of games. A 2018 survey conducted by the Australian Government found that around a third of Australian gamers pirated games, which is consistent with a more informal but global survey conducted in 2016 that found that around a third of PC gamers

admitted that they pirate games. Piracy is a particularly significant challenge to digital trade, and one way in which the video games sector and other creative industries have sought to fight back is through Technological Protection Mechanisms (TPMs). We generally do not support copyright exceptions for circumventing TPMs. In addition to making it harder to protect intellectual property, the practice of circumventing TPMs carries risks to families who may be endangered by the disabling of safety features and parental controls implemented through TPMs. It may also lead to bad actors hacking into the servers and networks of game companies and platforms.

Just as importantly, we are aware of reports of copyright infringement of video games by other games businesses. Game developers can spend tens of millions of dollars or more to create highly detailed and innovative games and must be able to protect their intellectual property from infringement from other businesses who may be seeking to exploit or copy the fruits of their labour in other markets. Strong copyright protections around the world, including through mechanisms that allow parties to practically seek recourse against infringers such as dispute resolution processes, help ensure that content creators such as Australian game developers have the security and confidence to invest in new digital exports and take risks in overseas markets.